

**FORM TO BE USED BY A STATE PRISONER IN FILING A COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. SECTION 1983 OR BY A FEDERAL PRISONER IN FILING A BIVENS CLAIM.**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

NO. 5:11-CT-3233  
(leave this space blank)

**FILED**

**NOV 17 2011**

DENNIS P. AVARONE, CLERK  
US DISTRICT COURT, EDNC  
BY [Signature] DEP CLK

Todd M. Carta

(enter full names of each plaintiff(s))

v.

Inmate Number 14632-014

Tracy Johns

Thomas Kane

Eric Holder

(enter full names of each defendant(s))

\*\*\*\*\*

**I. HAVE YOU BEGUN OTHER LAWSUITS IN FEDERAL COURT DEALING WITH THE SAME FACTS INVOLVED IN THIS ACTION? YES ( ) NO ☒**

If your answer is YES, describe the former lawsuit in the space provided below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**II. DID YOU PRESENT THE FACTS RELATING TO YOUR COMPLAINT TO THE STATE INMATE GRIEVANCE PROCEDURE? YES ( ) NO ☒**

If your answer is YES:

1. What steps did you take? \_\_\_\_\_
2. What was the result? (Attach copies of grievances or other supporting documentation.) \_\_\_\_\_

### VERIFIED STATEMENT

I have been advised of the requirements regarding exhaustion of administrative remedies and now submit this verified statement.

(Please choose the box that applies to your action):



There are no grievance procedures at the correctional facility at which I am being confined.

This cause of action arose at \_\_\_\_\_, and I am now being housed at \_\_\_\_\_. Therefore, I do not believe I have administrative remedies relating to this complaint at this time.

I have exhausted my administrative remedies relating to this complaint and have attached copies of grievances demonstrating completions.

### III. PARTIES:

In Item "A" below, place your name in the first blank and your present address in the second blank. Do the same for additional plaintiffs, if any. NOTE: ALL PLAINTIFFS LISTED IN THE CAPTION ON THE FIRST PAGE SHOULD BE LISTED IN THIS SECTION.

A. Name of Plaintiff: Todd M. Carta  
Name of Present Confinement F.C.I. Butner  
Address of Present Confinement P.O.Box 1000, Butner, N.C. 27509

In Item "B" below, place the full name of defendant in the first blank, his official position in the second blank, and his place of employment in the third blank. Use Item (C) through (F) for additional defendants. NOTE: ALL DEFENDANTS LISTED IN THE CAPTION ON THE FIRST PAGE SHOULD BE LISTED IN THIS SECTION.

B. Defendant Tracy Johns  
Position Warden  
Employed at F.C.I. Butner, Federal Bureau of Prisons  
Address P.O.Box 1000, Butner, N.C. 27509  
Capacity in which being sued: Individual ( ) Official (x) Both ( )

C. Defendant Thomas Kane  
Position Director, Federal Bureau of Prisons  
Employed at U.S. Dept. of Justice, Federal Bureau of Prisons  
Address 320 First Street, Washington, D.C. 20534  
Capacity in which being sued: Individual ( ) Official (x) Both ( )

D. Defendant Eric Holder

Position U.S. Attorney General  
Employed at U.S. Department of Justice  
Address Constitution Avenue and 10th Street N.W. Washington d.c.  
Capacity in which being sued: Individual ( ) Official ( ☒ ) Both ( ) 20530

E. Defendant \_\_\_\_\_  
Position \_\_\_\_\_  
Employed at \_\_\_\_\_  
Address \_\_\_\_\_  
Capacity in which being sued: Individual ( ) Official ( ) Both ( )

F. Defendant \_\_\_\_\_  
Position \_\_\_\_\_  
Employed at \_\_\_\_\_  
Address \_\_\_\_\_  
Capacity in which being sued: Individual ( ) Official ( ) Both ( )

#### IV. STATEMENT OF CLAIM

State here as briefly as possible the **FACTS** of your case. Describe how each defendant is involved. Include also the names of the other persons involved, dates and places. **DO NOT GIVE ANY LEGAL CITATIONS OR ANY LEGAL ARGUMENTS OR CITE ANY STATUTES.** If you wish to allege a number of related claims, number and set forth each claim in a separate paragraph. Use as much space as you need. Attach extra sheets if necessary.

Please see attached

## Statement of Claim

### Carta's Condition of Confinement Violates Due Process and the Intent of 4248.

1. Todd M. Carta was committed on July 7th, 2011 to the Custody of the Attorney General to be placed into a Suitable Facility.

The conditions which Carta is subjected to are the exact same conditions of confinement that Federal Prisoners serving a Federal Sentence are subjected to. In actuality the conditions I am subjected to are actually more restrictive and more punitive than the General population prisoners at Butner are forced to endure.

2. Carta is not being held under any type of criminal law but under civil law. Because he is committed he must be afforded More Considerate treatment and Conditions of Confinement than Criminals whose conditions of confinement are designed to punish. However, that clearly is not the case here.

### Carta submits the following examples to support his case.

1. I am forced to wear the same exact uniform as Convicted Federal Prisoners.
2. I remain in the custody, Care and Control of the Federal Bureau of Prisons, not the Department of Health and Human services. I am Supervised, Disciplined and controlled by Correctional Officers of the B.O.P. who have no training in the supervision of Mental Health patients living in a Civil Commitment or detention setting. The B.O.P. is a Prison system. The B.O.P. staff are trained to deal with Prisoners serving sentences for Crimes, not Civil Commitments or Detainees. Carta is controlled and under the authority of Correctional staff including Psychologists in the

Committment and Treatment Program(C.T.P.) who are Correctional officers first and Psychologists second. This type of confinement is Punitive and thus Punishment.

3. Carta is in the physical presence of prisoners serving Criminal Sentences on a daily basis. 4248 Committments and Detainees eat all their meals in the Physical Presence of Prisoners serving Criminal sentences on a daily basis. Additionally, when Carta has an appointment in Medical there are usually anywhere from 5 to 20 Sentenced Prisoners sitting there with him.

Additionally, Maryland unit in addition to housing all these Committed and Detained under 4248 also holds a number of offices for B.O.P. staff, Including case managers, Counselors, Secretaries and the head of Psychology services at F.C.I. Butner. These staff members are responsible for a number of areas with respect to general population prisoners at Butner. For this reason they are often sought out by Prisoners. Because the staff offices are in Maryland unit this is where the Prisoners must come to see the Staff. Therefore, they are in direct physical contact with Carta, and the 60 other men committed and or Detained under 4248. Why Prisoners are permitted to be in a housing unit for Civilly Committed and or detained people is a mystery to Carta.

Additionally, Federal Prisoners are in Maryland unit 6 times a day to bring and pick up Food carts to the Special Housing unit which has an entrance in Maryland unit. Once again, these Prisoners are in direct physical contact with Carta and all others Committed and or Detained under 4248. It is also worth noting that there is another entrance to the Special Housing unit in a general population

Prisoner unit. However, the B.O.P. staff refuse to use that entrance, instead placing Prisoners in physical contact with Civilly Committed and or Civil Detainees 6 times daily.

Also, when people Committed and or Detained under 4248 need a Haircut the person who comes into the unit is a Federal Prisoner. Therefore, a Federal Prisoner cuts the Hair of Civilly Committed men and or Detainees, including Carta.

4. Carta is not afforded the same Educational and Vocational opportunities as General Population Prisoners. Prisoners serving Criminal sentences have multiple programs available to them. These include but are not limited to: Blueprint Reading, Introduction to Towing, Keyboarding, Electrical education, Mineke Car Care Program, G.E.D. Etc... NONE of these programs and opportunities are offered to Carta or the other men Committed or Detained under 4248. Also, General Population Prisoners have the Opportunity to participate in Narcotics Anonymous, Carta does not.

5. Carta is given less recreation time and freedom than General Population Prisoners. General population Prisoners Have access to the Recreation yard from 6:30 A.M. to 8:00 P.M. 7 days a week. Carta is only permitted on the rec yard for less than 2 hours daily, usually between 10:30 A.M. to 12:00 P.M. Carta only has rec yard time in the evening 1 day a week (Tuesday). However, the evening rec yard time only extends to the outside yard and not the Rec center which houses T.V.s, Pool Tables, Basket Ball courts, Aerobic Exercise equipment and a Band room plus Hobbycraft rooms. In cold weather Committeds and or Detainees are not permitted to go indoors to warm up at all. Also, General Population Prisoners are given the opportunity to walk around once an hour during the "10 Minute move", Carta is not allowed outside of Maryland unit except

for the recreation stated above and to go to the chow hall. A makeshift Rec yard has been set up behind Maryland unit which is open only when a Officer is available to supervise. It is never open on Tuesday's. Futhermore, the only thing on this "Rec yard" are some Benches, a Horseshoe Pit, and a Volleyball court. In fact, the small Track is not even Paved which results in Handicapped Committments and or Detainees not being able to utilize the Rec Yard behind Maryland unit. It has none of the recreational opportunities that the prison rec yard has and which Convicted Prisoners get to enjoy.

6. Carta is not given equal access to the prison Laundry. General Population Prisoners have access to the laundry 5 days a week. However, Carta only has access to the Laundry once a week. This is a serious problem since there is only 2 Washers available to the over 60 men in Maryland unit.
7. More important is the fact that all Disciplinary issues are handled not by Mental Health staff but by Federal Correctional Officers. When a Federal Prisoner is Disciplined it is done so by Federal Correctional Officers. Federal Officers are given no training in how to deal with Civil Committments/Detainees. Carta has been Disciplined in the past at Devens F.M.C. by Federal Correctional Officers the same as Federal Prisoners, not by Mental Health Staff.
8. Carta is given Urine tests on a monthly basis even though in the 10 years Carta has been held (4 years 5 months as a Prisoner 4 years 6 months as a civil Detainee and 4 months as a Civilly Committed Person) he has NEVER had a Positive Urine test. At times Carta<sup>3</sup> woken up at between 3 and 5 A.M. for this test.

9. As of this date, November 5th, Carta does not yet have access to E-Mail and in fact has repeatedly been denied at Devens F.M.C. Carta has tried repeatedly since the TRU-Links plan was initiated. Carta has never had a charge that should preclude him from enjoying convenient communications with his lawyer. Even by B.O.P. policy Carta should not be precluded from the E-MAIL system.
10. Federal Prisoners are limited on what they may purchase in the Prison Commissary and what they may watch on T.V. Carta is held to the EXACT same limitations. He may only shop at the Prison commissary and may only buy whatever is available to Federal Prisoners. Carta also pays a 30% sur charge on all non religious Commissary items. This 30% sur charge is levied so that **Federal Prisoners** may enjoy Educational programs and Leisure activities. Ironically, Civil Commitments and Detainees are paying 30% so that **Federal Prisoners** can Educate themselves and play Bingo, Basketball, Handball, Football Softball and multiple games and activities. Additionally, we are limited to the exact same Television viewing as Federal Prisoners (no R rated movies, Same viewing channels).
11. Carta must endure stand up counts the same as Federal Prisoners.

**Carta has the right to Freedom from Harm.**

12. As has already been stated, Carta is around and in the physical presence of Federal Prisoners serving criminal sentences on a daily basis. Carta is in fear for his safety as it is only a matter of time until a Federal Prisoner assaults a Civilly committed person and or Detainee.

Because Carta is a Civilly Committed person he has the right to be free from harm. Because Carta is Civilly Committed person who

is labeled "Sexually Dangerous" he is clearly in harm's way by being forced to be in the physical presence of medium security Federal Prisoners, some of which are serving very long sentences for very violent crimes. As the court is likely aware, in a prison setting a sex offender is the most despised type of inmate. Many are the victims of assaults at the hands of other Prisoners in our nation's Prisons. By forcing Carta to be in the physical presence of Prisoners Carta's right to be free from harm is being violated. Additionally, as a Civilly Committed Person Carta and all Committed and Detained persons have a right to be kept away from violent Felons serving a Criminal Sentence just as the General Public does.

The tension at F.C.I. Butner between the Prisoners and the civil Commitments and Detainees is high. The Prisoners don't want the Civilly Committed and Detained here and we do not want to be here. It is simply a matter of time before physical violence breaks out between the two groups, likely in the form of a prisoner serving a long sentence assaulting a Civilly Committed person and/or Detainee.

13. Carta has a right to compensation for labor in accordance with minimum wage laws of the Federal labor standards act. Carta also believes that he should enjoy the benefits of a meaningful job like Federal prisoners do.

Because Carta is not a Federal Prisoner he has a right to be compensated for work in accordance with the Federal Fair Labor Standards Act. Many of those Detained under 4248 including Carta have jobs here at Butner. However Carta like all other Commitments and Detainees is paid the exact same amount as a Federal Prisoner

serving a Criminal Sentence. Carta makes 29 cents an hour. Carta and all others Detained under 4248 are subject to the B.O.P. inmate performance pay policy statement. Because Carta and the other Commitments and Detainees are Civil, they are entitled to Minimum wage.

**Carta has a right to Educational and Vocational Training under  
Federal Law.**

14. As has already been stated Carta is not provided with anywhere near the Educational and Vocational opportunities that Federal Prisoners are. As a Civilly Committed Person, Carta has a right to these opportunities, if not a right to greater Educational and Vocational opportunities than Federal Prisoners. As it stands now Carta is provided with no such opportunities.

**Carta has the right to lawful Search and Seizure.**

15. Because Carta remains in a Prison there is legitimate security concerns and a need for searches by Staff. Carta realizes this and does not challenge legitimate Searches done for Security purposes. However, the B.O.P. is far beyond such.

While housed in the North Carolina unit Carta was subjected to searches of his cell on a daily basis. When Carta told his treating Psychologist this, Carta was informed that he was subject to the same rules just like any other Federal Prisoner.

Carta is ready and willing to cite additional examples of his conditions of confinement to show that he is being treated exactly the same if not worse than Convicted Federal Prisoners.

The Legislative intent of this Law (4248) makes it clear that it was intended to be "substantially similar to the Kansas law upheld in Kansas V. Hendricks and Kansas V. crane." In Hendricks the Detainee was housed in a housing unit inside a prison but was in the custody of the Department of Health and Human Services. His conditions of confinement were the same as a patient in a Mental Hospital". He was also completely separated from Prisoners and the Department of Corrections had no authority over him.

Tracy Johns, Thomas kane and especially Attorney General Eric Holder are directly responsible for all claims in this petition. The violation of my rights would not be possible without approval from Johns, Kane and the Attorney General Eric Holder. All decisions regarding the rights and living conditions of 4248 Detainees are the responsibility of Johns, Kane and Especially Eric Holder.

State briefly exactly what you want the Court to do for you. **MAKE NO LEGAL ARGUMENTS. DO NOT CITE CASES OR STATUTES.**

2. I ask that the Court order the Department of Health and Human services/U.S. Public Health Administration to assume anything else having to with those Committed and/or Detained

3. I ask the Court to order the Bureau of Prisons to Provide Compensation for labor in accordance with the Minimum Wage laws of the Federal Fair Labor and Standards Act.
4. I ask the Court to order the Bureau of Prisons to provide Education and Vocational Training that is equal to or exceeds that which is provided to Federal Prisoners.
5. I ask the court to order the Bureau of Prisons to allow us to seal our outgoing mail. I further ask the court to order the B.O.P. to stop all Shakedowns unless there is reason to believe the person is concealing a weapon on his person or in his living quarters.
6. I ask the court to order the B.O.P. to stop placing those that are Detained and/ or Committed under 4248 in solitary confinement(S.H.U.) unless the detainee is a threat to himself or others.
7. I ask the court to order that all staff who work in the "Maryland unit" be trained in how to deal with mental health patients detained under civil law and that they be instructed that 4248 COmmittments and detainees are not Prisoners and should nt be treated as such.
8. I ask the court to order that all disciplinary matters with respect to 4248 detainees be conducted by Mental Health Proffessionals in the employ of the Department of Health and Human services/ U.S. Public Health Administration, Not B.O.P. Correctional Staff or Officers.
9. I ask the court to direct the Department of Health and Human Services/ U.S. Public Health administration to write rules and regulations that are completely independent of B.O.P. policy, and conform to established law with respect on how to treat Mental Health Patients who are civilly

Committed and Detained. These would be the rules and Regulations that governs 4248 Commitments and Detainees.

10. I ask the Court to order the Federal Bureau of Prisons to keep us Completely Seperated from Federal Prisoners serving Criminal Sentences. I also ask the Court to order the Federal Bureau of Prisons to allow Civil Commitments and/or Detainees to Prepare and Serve their own food.
11. I ask the court to order the Federal Bureau of Prisons to stop the practice of monotoring Civil Commitments and Detainees Phone calls and E-Mail.
12. I ask the Court to order the Federal Bureau of Prisons to allow Civilly Committed and Detained persons to have packages sent to them from Approved outside sources to obtain items that we are entitled to under the Federal Bureau of Prisons own Program Statements.
13. I ask the Court to appoint a "Special Master" to coordinate these changes and report to the Court on the progress and any lack thereof, as well as to advise the court.
14. I ask this Honorable Court to appoint an Attorney to Mr.Carta for the purpose of aiding him in the preparation of his Bivens.
15. any other relief I may be entitled to.

under 18 U.S.C. 4248. In other words, the Department of  
Health and Human services/U.S. Public Health Service will  
not need B.O.P. approval to Improve the Conditions of  
Confinement as they see fit.

Please see Attached  
Signed this 7 day of November 200 11

*Toritt M. Caste*  
Signature of Plaintiff

\_\_\_\_\_  
Signature of other Plaintiffs  
(if necessary)

I declare under penalty of perjury that the foregoing is true and correct.

11-7-11  
Date

*Toritt M. Caste*  
Signature of Plaintiff

\_\_\_\_\_  
Signature of other Plaintiffs  
(if necessary)